

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Martin J Walsh,

10 Plaintiff,

11 v.

12 VH Harvesting LLC, et al.,

13 Defendants.  
14

No. CV-22-01805-PHX-DJH

**CONSENT JUDGMENT**

15 Pending before the Court is the Stipulation Regarding Consent Judgment filed  
16 jointly by Plaintiff Martin J. Walsh, United States Secretary for the Department of Labor  
17 (“Secretary of Labor”) and Defendants VH Harvesting, an Arizona LLC, and Preston Van  
18 Hofwegen, an individual (collectively the “VH Defendants”) (Doc. 26). The Secretary of  
19 Labor and VH Defendants agree to the entry of this Order to resolve all matters in dispute  
20 in this action between them.

21 Accordingly,

22 **IT IS ORDERED** that the Court grants the parties’ Stipulation Regarding Consent  
23 Judgment (Doc. 26) and adopts their stipulated settlement terms. (Doc. 26-1).

24 **IT IS FURTHER ORDERED** as follows:

25 //

26 //

27 //

28 //

## FINDINGS

1. VH Defendants agree that the Court has jurisdiction over the parties and the subject matter of this civil action, and that venue lies in the United States District Court of Arizona.

2. The Secretary of Labor filed a Complaint (Doc. 1) alleging VH Defendants and Defendant T & K Feeds, Inc. (collectively “Defendants”) violated the H-2A Program under Section 218 of the Immigration and Nationality Act (“INA”) as amended by the Immigration and Reform Control Act of 1986 (“IRCA”) and their Regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501 (“H-2A Implementing Regulations”). VH Defendants have appeared in this action.

3. VH Defendants have retained counsel and filed an answer. (Doc. 21).

4. On October 20, 2022, the Secretary of Labor applied for a Temporary Restraining Order (“TRO”) and Preliminary Injunction (Doc. 2) seeking to enjoin Defendants from violating its obligations under the H-2A program.

5. On October 25, 2022, the Secretary of Labor and Defendant T & K Feeds, Inc., stipulated to the entry of a preliminary injunction against Defendant T & K Feeds, Inc., (Doc. 14), which the Court granted (Doc. 17).

6. On October 27, 2022, the Court granted the Secretary of Labor’s Application for a TRO against VH Defendants (Doc. 18) and enjoined the VH Defendants from violating the H-2A regulations.

7. VH Defendants violated the following obligations:

a. VH Defendants violated their obligations under 20 C.F.R. § 655.122 in that Defendants required the workers to perform work that was not authorized in the clearance order that VH Defendants filed with the United States Department of Labor.

b. VH Defendants violated their obligation under 20 C.F.R. § 655.122(h)(4) and 20 C.F.R. § 655.135(e) to provide the workers with safe employer-provided transportation.

c. VH Defendants violated their obligation under 8 U.S.C. § 1188(c)(4) and 20

- 1 C.F.R. § 655.122(d) to provide the workers with appropriate housing at no  
2 cost to the workers.
- 3 d. VH Defendants violated their obligation under 20 C.F.R § 655.122(g) to  
4 provide the workers with three meals per day or access to kitchen facilities  
5 for a portion of the employment period.
- 6 e. VH Defendants violated their obligation under 20 C.F.R § 655.122(l) to pay  
7 the workers the adverse effect wage rate. Defendants have paid workers rates  
8 between \$100-\$150/day for some workdays lasting 14-16 hours, resulting in  
9 an hourly rate below that required under the H-2A program.
- 10 f. VH Defendants violated their obligation under 20 C.F.R § 501.4 to not  
11 “intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner  
12 discriminate against any person who has” sought protections under the H-2A  
13 program.
- 14 g. Collectively, the violations above by VH Defendants affected over 17  
15 workers.
- 16 8. VH Defendants agree to resolve all allegations against them in the Complaint.
- 17 9. VH Defendants agree to the entry of this Consent Judgment without contest.
- 18 10. VH Defendants acknowledge that they and any individual, agent, or entity acting on  
19 their behalf or at their direction have been given, and in the future will be given notice of  
20 and an understanding of the provisions of this Consent Judgment.
- 21 11. VH Defendants agree that any successors-in-interest to VH Harvesting, LLC will  
22 be given a copy of this Consent Judgment

23  
24 **ORDER**

25 **I. PRELIMINARY INJUNCTION**

26 **IT IS FURTHER ORDERED** that pursuant to 8 U.S.C. § 1188(g)(2) and 29 C.F.R.  
27 §§ 501.16(b) & (c), VH Defendants and their officers, agents, servants, employees,  
28 successors and all persons in active concert or participation with them are permanently

1 enjoined and restrained from violating any provisions of the INA and the H-2A  
2 Implementing Regulations, with special emphasis in the manners identified below:

3 1. VH Defendants shall not, contrary to 20 C.F.R. § 655.122, require workers to  
4 perform work that was not authorized in a United States Department of Labor clearance  
5 order.

6 2. VH Defendants shall not, contrary to 20 C.F.R. § 655.122(h)(4) and 20 C.F.R. §  
7 655.135(e), fail to provide transportation that complies with all applicable federal, state or  
8 local laws and regulations.

9 3. VH Defendants shall not, contrary to 8 U.S.C. § 1188(c)(4) and 20 C.F.R. §  
10 655.122(d), fail to provide housing that meets the applicable health and safety standards at  
11 no cost to H-2A workers.

12 4. VH Defendants shall not, contrary to 20 C.F.R. § 655.122(g), fail to provide all H-  
13 2A workers with either meals or kitchen facilities.

14 5. VH Defendants shall not, contrary to 20 C.F.R § 655.122(l), fail to pay the workers  
15 at least the adverse effect wage rate, the prevailing hourly wage rate, the prevailing piece  
16 rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage  
17 rate, in effect at the time work is performed, whichever is highest, for every hour or portion  
18 thereof worked during a pay period.

19 6. VH Defendants shall not, contrary to 20 C.F.R § 501.4, “intimidate, threaten,  
20 restrain, coerce, blacklist, discharge, or in any manner discriminate against any person who  
21 has” sought protections under the H-2A program.

## 22 **II. MONETARY JUDGMENT**

23 **IT IS FURTHER ORDERED** that in consideration of this Consent Judgment, to  
24 resolve this case, and in restitution and remediation, judgement is entered in favor of the  
25 Secretary of Labor against VH Defendants in the amount of \$281,683.08, which is  
26 comprised of \$181,683.08 in back wages and damages, and \$100,000.00 in civil money  
27 penalties.

28 1. VH Defendants shall satisfy the monetary terms of this judgment upon their

1 payment of \$259,271.08 to the Secretary of Labor, which represents the total sum of the  
2 back wages and civil money penalties assessed and finally determined or ordered by the  
3 Secretary of Labor for this matter pursuant to authority granted in 29 C.F.R. § 501.16(a)(1).

4 2. VH Defendants shall make all back wage payments required in this Consent  
5 Judgment as follows:

- 6 a. On or before November 18, 2022, for workers number 1-8 on the attached  
7 Exhibit A, by preparing a check or wire transfer in the amount indicated next  
8 to the workers name payable to the worker and the United States Department  
9 of Labor as the alternative payee. To fund these payments, VH Defendants  
10 will receive \$22,411.08 from Defendant T & K Feeds, Inc. for back wages it  
11 owes worker numbers 1-9.
- 12 b. On or before November 18, 2022, make payments as indicated in column  
13 “VH Payments 11/18/2022” on Exhibit A.
- 14 c. On or before December 19, 2022, make payments in the amounts indicated  
15 in column “VH Additional Payments Due by 12/19.2022” on attached  
16 Exhibit A. VH Defendants shall make payments to the workers via check or  
17 wire transfer, as instructed by the Secretary of Labor, or if these methods are  
18 deemed not feasible by the Secretary of Labor by depositing the funds with  
19 the United States Department of Labor, Wage and Hour Division online by  
20 ACH transfer, credit card, debit card, or digital wallet by going to  
21 <https://www.pay.gov/public/form/start/77761888>, or by going to  
22 [www.pay.gov](https://www.pay.gov) and searching “WHD Back Wage Payment - WE Region”. All  
23 payments shall reference BW Case Number # 1972630.
- 24 d. All payments of Civil Money Penalties shall be made by using the “WHD  
25 Civil Money Penalty Payment Form – Western Region” at  
26 <https://www.pay.gov/public/form/start/77743734>. The payment shall  
27 reference Case Number 1972630. VH Defendants shall make CMP payments  
28 as follows: March 1, 2023 - \$25,000, June 1, 2023 -\$25,000, September 1,

1                   2023 - \$25,000, December 1, 2023 - \$25,000.

2       3.       Any individual, agent, or entity acting on VH Defendants' behalf will be given  
3       notice of and an understanding of the provisions of this Consent Judgment.

4       4.       Any successors-in-interest to VH Harvesting, LLC shall be given a copy of this  
5       Consent Judgment.

6       5.       VH Defendants, and any successors to Defendant VH Harvesting (i.e., any entity  
7       acquiring at least 20% of its assets) and any individual, agent, or entity acting on its behalf  
8       or at its direction shall be debarred under 29 C.F.R. § 501.20 from receiving future labor  
9       certifications for three years starting 30 days from the date the notice of debarment is used  
10      by the Wage and Hour Division. VH Defendants, their successors, and any individual,  
11      agent, or entity acting on their behalf or at their direction agree and acknowledge in this  
12      Consent Judgment and that they are voluntarily and knowingly waiving any right that they  
13      may have to request review or otherwise contest this three-year debarment and the  
14      implementation thereof. VH Defendants will not request review of or otherwise contest  
15      any debarment notice issued by the Wage and Hour Division and will allow it to become a  
16      final order.

17      6.       VH Defendants, their successors, and any individual, agent, or entity acting on their  
18      behalf or at their direction shall be prohibited from applying for any future H-2A labor  
19      certifications under 20 C.F.R. Part 655, Sub-Part B or contesting any denial of future H-  
20      2A applications under 20 C.F.R. Part 655, Sub-Part B for three years from the date of this  
21      Consent Judgment.

22      7.       VH Defendants, any successors to Defendant VH Harvesting (i.e., any entity  
23      acquiring at least 20% of its assets), and any individual, agent, or entity acting on its behalf  
24      or at its direction shall be debarred under 29 C.F.R. § 655.73 from receiving future labor  
25      certifications for three years starting 30 days from the date the notice of debarment issued  
26      by the Wage and Hour Division. VH Defendants, their successors, and any individual,  
27      agent, or entity acting on their behalf or at their direction agree and acknowledge in this  
28      Consent Judgment and that they are voluntarily and knowingly waiving any right that they

1 may have to request review or otherwise contest this three-year debarment and the  
2 implementation thereof. VH Defendants will not request review of or otherwise contest  
3 any debarment notice issued by the Wage and Hour Division and will allow it to become a  
4 final order.


5 8. VH Defendants, their successors, and any individual, agent, or entity acting on their  
6 behalf or at their direction shall be prohibited from applying for any future H-2 B labor  
7 certifications under 20 C.F.R. Part 655, Sub-Part B or contesting any denial of future H-2B  
8 applications under 20 C.F.R. Part 655, Sub-Part B for three years from the date of this  
9 Consent Judgment.

10 9. Each party shall bear all fees, costs, and other expenses incurred by such party in  
11 connection with any stage of this proceeding, including, but not limited to, any costs  
12 referenced in the Equal Access to Justice Act.

13 **III. ENFORCEMENT**

14 **IT IS FURTHER ORDERED** that the Court shall retain jurisdiction of this action  
15 for purposes of enforcing compliance with the terms of this Consent Judgment.

16 Dated this 28th day of November, 2022.

17  
18   
19 Honorable Diane J. Humetewa  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28



**Exhibit A**

	First Name	Last Name	Start Period	End Period	Back Wages VH	Back Wages T & K	Total Back Wages Due VH and T & K	T & K Payments 11/18/2022	VH Payments 11/18/2022	Total Payments 11/18/2022	VH Additional Payments Due by 12/19/2022
1	Jose Alfredo	Vargas Magana	3/4/2022	12/1/2022	\$5,256.00	\$4,694.93	\$9,950.93	\$4,694.93		\$4,694.93	\$5,256.00
2	Gerardo Jacobo	Zepeda Zepeda	3/4/2022	12/1/2022	\$9,722.24	\$4,634.35	\$14,356.59	\$4,634.35		\$4,634.35	\$9,722.24
3	Jose Domingo	Ponce Topete	3/4/2022	12/1/2022	\$18,572.08	\$405.90	\$18,977.98	\$405.90	\$ 2,765.11	\$3,171.01	\$15,806.97
4	Juan Manuel	Padilla Olivera	3/4/2022	12/1/2022	\$15,429.84	\$1,613.89	\$17,043.73	\$1,613.89	\$ 1,557.11	\$3,171.00	\$13,872.73
5	Juan Diego	Ramirez Penaloza	3/4/2022	12/1/2022	\$16,404.59	\$327.12	\$16,731.71	\$327.12	\$ 2,843.88	\$3,171.00	\$13,560.71
6	Juan Uvaldo	Lopez Landin	3/4/2022	12/1/2022	\$21,091.64	\$337.12	\$21,428.76	\$337.12	\$ 2,833.88	\$3,171.00	\$18,257.76
7	Miguel Gerardo	Cortes Fregozo	3/4/2022	12/1/2022	\$6,843.08	\$3,991.33	\$10,834.41	\$3,991.33	\$ 6,843.08	\$10,834.41	\$0.00
8	Antonio	Iraí Chavez Galva	3/4/2022	12/1/2022	\$9,918.16	\$4,159.29	\$14,077.45	\$4,159.29		\$4,159.29	\$9,918.16
9	Alan Arturo	Bueno Cardenas	3/4/2022	8/14/2022	\$5,658.64	\$2,247.15	\$7,905.79	\$2,247.15 to VH			\$7,905.79
10	Armando	Barriga Gonzalez	6/1/2022	8/4/2022	\$3,374.82		\$3,374.82				\$3,374.82
11	Carlos	Salas Remis	3/4/2022	5/18/2022	\$3,038.96		\$3,038.96				\$3,038.96
12	Dora	Galvez Alcaraz	3/4/2022	10/16/2022	\$7,681.20		\$7,681.20				\$7,681.20
13	Jairo Ivan	Barriga Rivera	6/1/2022	8/4/2022	\$4,129.74		\$4,129.74				\$4,129.74
14	Jesus	Ronquillo Salas	3/4/2022	5/18/2022	\$4,282.91		\$4,282.91				\$4,282.91
15	Jose Trinidad	Velasco Villa	3/4/2022	12/1/2022	\$20,226.47		\$20,226.47				\$20,226.47
16	Mario	Alvarado Navarr	3/4/2022	4/16/2022	\$3,820.32		\$3,820.32				\$3,820.32
17	Williams	Contreras Lopez	3/4/2022	4/16/2022	\$3,820.32		\$3,820.32				\$3,820.32
<b>TOTAL</b>					<b>\$159,271.01</b>	<b>\$22,411.08</b>	<b>\$181,682.09</b>	<b>\$22,411.08</b>	<b>\$16,843.06</b>	<b>\$37,006.99</b>	<b>\$144,675.10</b>